

STATEMENT
OF
THE CASE
OF
BARTHOLOMEW TIERNEY,
LATE
GUAGER AT PORT St. JOHNS,
Lower-Canada,
RESPECTFULLY ADDRESSED TO
THE PUBLIC.

MONTREAL:
PRINTED AND PUBLISHED FOR THE AUTHOR,
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.....
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PREFATORY OBSERVATIONS.

To suppose that a relation of the affairs of a private individual can be at all interesting to the public, argues such a high degree of presumption and egotism, as no man of humble pretensions, or common sense, would choose incurring. When, however, any thing of a nature directly, or indirectly, affecting the public interest, for instance, when a flagrant breach of justice, or an infliction of severe oppression, has been endured by any individual in society, when his conduct and character have been misrepresented and malignantly assailed, and when a substantial injury to his fame and prospects has been the consequence, it is, as undoubtedly his right, as it is obviously his duty, to place all that tends to explain the one, or rescue the other, from unjust aspersion, in a fair and proper point of view before that public: Urged by these considerations, and no other, I respectfully intreat their attention to the following pages.

The situation of an acting Custom House Officer, whose salary is a mere trifle, who depends materially upon his activity in enforcing the provisions of the revenue laws for his absolute living, is, to a man of any feeling, perhaps one of the most ungracious, if not miserable, that can be well imagined. I accepted the office of Guager at Port St. Johns, in a season of pecuniary difficulties, when no better means offered of subsisting a young and increasing family, and entered upon the duties of my employment in October, 1820, with a determination to discharge them, however unpleasant they might prove to be, with integrity and firmness. It was impressed upon my attention when I received my com-

mission in Quebec, that smuggling, to an almost incredible extent, was carried on via St. Johns; that an active, vigilant officer was required at that Port; and "energy and exertion" were recommended to me, not only as my principal dependence for an adequate income, but, the basis on which would rest my chance for future promotion in the department of the Customs. I became then, when a short residence in St. Johns convinced me it was called for by circumstances, a sort of innovator on the relaxed system which had obtained there, (or was imagined to have obtained there as well as in * other places.) Earning by it the hostility of many unreflecting, and some despicable, characters. This, has subsequently been *made to produce to me* all its inconveniences. At this period, the detail of the official business was, from a certain cause, † under the almost exclusive management of the *then* second Officer of the Customs. By the general conversation of the place, I had been made aware soon after my arrival, that my presence in St. Johns would have been gladly dispensed with, as, I was not the person to whom it was expected the situation of Guager would be given; but I never did, or can, think so meanly of a mind of undoubted honour, as to imagine a latent dislike existed towards me on *that* account, or that a feeling of the kind was ever allowed to mingle in

* About the time I allude to, a meeting of some of the first commercial characters in Canada, was convened by the honourable John Richardson, whose luminous speech on the increase and evils of smuggling, both in a *national* and *moral* point of view, will be long remembered.

† The increasing infirmities of the late William Lindsay, Esq.— This *really upright* and *worthy* man was more than once wrought upon by the misrepresentations and artifice of *somebody* about him, to behave with harshness to me; acting on the impulse of the moment, rather as it was willed he should act, than as I deserved; yet on reflection, or a proper explanation from me, *he never failed doing me justice*. I rejoice in the opportunity this publication affords of testifying the high veneration in which I hold his memory and character.

† It had been solicited by Mr Lindsay for one of his Younger Sons

subsequent transactions, by the individual supposed to harbour it.—In the openness of my disposition, *I did mention* to some persons (who, no doubt, bruited it abroad,) that future promotion in the department, commensurate to my exertions and good conduct, had, in a manner, been *promised to me*. Now whether arising from this misplaced confidence of mine reaching an interested and adverse quarter, whether from that *unmerited*, and consequently unaccountable, dislike shewn towards me from the very beginning, or whether as a means of evincing his apparent devotion to the interest of certain parties, (paving the way thereby, to that complete domination over the concerns of the department, requisite for the perfection of his own ultimate views); I may justly date, on the part of the above mentioned *then* second Officer of the Customs, a settled and determinate plan to render my situation, by ungentlemanly usage and little *mean harrassings*, so uncomfortable, that I must resign it in disgust, or so unproductive, as to be scarcely worth holding.—Convinced of its existence, I refused upwards of two years ago, the appointment of Junior Landwaiter, which his Excellency the Governor was then pleased to permit me to hold in addition to that of Guager, *solely* to preserve my *first situation*, and my *respectability*, as the duties of the extra office, would have brought me into closer contact with a man, I saw determined to oppress, degrade, and insult me, on all occasions. Any person acquainted with public business, will readily comprehend that, whenever a good understanding does not subsist between the head, or acting head, of a department, and any officer or person under his controul, nothing is more easy to the superior, than to *create* situations to *invite* disagreement, in which the adverse party may, upon the face of a *formal official report*, become responsible for much more blame and censure than could possibly attach to him, if the secret motives, and (if I may

After the Death of Mr. Landwaiter, the Comptroller, which was given to his Son William by a Father's
 & a marriage immediately took place between him & the Sister of Collector Ellice.

be allowed the use of metaphor,) wheel within wheel-machinery, moved *in getting up that report*, were closely investigated and brought to view. Such investigation, however, can never be expected, for, from the established, and generally speaking, wise principle, upon which all public business is conducted; *the enforcement of deferential respect and obedience to all superiors in office*; it is considered relatively injurious to the public service to establish any precedent for the reception of complaints against such persons, unless they appear to be of a character so definite, and so strongly supported by proofs, as to call for, and justify, the measure. The difficulty of obtaining these, especially in cases where they must be drawn reluctantly, *if at all*, from persons to whom present interest and future well-doing, prescribe the necessity of observing the strictest neutrality, (if indeed so placed they have virtue enough to avoid becoming the warm and zealous partisans of the stronger party,) is too obvious to need further comment. To this may be added, particularly in mine, the almost impossibility of recalling circumstances, unwisely suffered at the time they occurred, to lapse into oblivion, by omitting to *secure testimony*, to the memory of persons who stand on a perfectly independent ground between both parties. With the above *real disadvantages* to contend with, I shall nevertheless, by the production of genuine documents, hope to prove a case of extreme hardship; and have therefore endeavoured to place, as clearly as possible, before the reader's view, the position in which I stood with regard to the good or ill will of my superiors in office, during the whole period of my service in St. Johns, as well as at those particular times to which my statement will refer. I trust I shall not be considered too intrusive on his patience.

BARTHOLOMEW TIERNEY.

ST. JOHNS, 14th November, 1823.

Particulars

*Respecting the Seizure of the STEAM-BOAT PHOENIX, at
St. Johns, 26th August, 1822,*

By BARTH. TIERNEY, *Guager.*



I HAD, in my capacity of Custom-House Officer, received, on several occasions, information, that the Steam-Boats Congress and Phoenix were the vehicles of an extensive contraband trade. I made several seizures on board the Congress. On the 16th September, 1821, May 5th, and 15th, 1822, I also made seizures on board the Phoenix. At the above dates, I did not know, nor did my "colleagues" in office * ever inform me that I had a right to seize any vessel, or craft, in which I might find contraband property. Some friends of mine, better informed respecting the existing revenue laws, than I was, advised me of such right; and conceiving it to be my duty, I determined on any future occasion, to carry such laws into effect. With this view, I warned the respective commanders of those vessels of my intention in due time. On Wednesday, 21st August, 1822, I re-

* Yet, the Collector of the Customs, might, had he pleased, have informed me of every point of law, from *seizure* to *sharing* of proceeds in such case. Having himself (some years ago, while holding a different situation in the Custom House than he now holds,) seized a sloop laden with a valuable cargo of tobacco. There is, however, this striking difference between his seizure of the sloop and mine of the Phoenix. The former belonged to one or two struggling individuals, the latter to a *numerous* and *opulent company*, allowed to ply their vessels on the waters of his Britannic Majesty's territory, on the faith of observing the laws of trade.—Of course, the injury done by me to the aforesaid company, was, of all others, the most appropriate theme for the severity of *his* censure, and the eloquence of his commiseration for the *unfortunate sufferers*.

ceived information that two bags of sewing silks were secreted in the interior of the *Phoenix*. I directly proceeded on board in search of the property; went into a low, dark, wet passage, apparently running under the entire range of cabins, and communicating (as my information stated,) by concealed trap-doors, with the Engineer's room, fore-castle, &c. &c. By the light emitted from a raised trap-door, at its extremity, I saw a man, dragging along bags, such as described to me: I think I *might* have overtaken him, had I been *very* anxious to do so. I returned on deck, descended to the fore-cabin, discovered a trap-door, around which were wet foot marks—this I pointed out to Captain Sherman, as being the place from whence the man I had been pursuing had evidently emerged. Captain S. declared he was ignorant of, or at least did not recollect, such trap was in that cabin. In reply to a question of his, I said the man in whose custody the bags of silk were, was *Wilson, his Pilot*; advised him to make enquiry, * and dismiss this man from the Boat, as his practices endangered the Company's property; my information pointing him out as the person who *regularly took charge of smuggled goods*. I then warned Captain Sherman, that should I find on any future search illegal articles on board, I should feel it my bounden duty to *seize the Phoenix*. Four days after this occurrence, viz: on *Sunday, 25th August*, I again received information of ten bales of valuable crapes and silks being secreted in the *Phoenix*. I went on board that evening, accompanied by Robert Davies, district Bailiff, descended to the Engineer and Cook's rooms, making therein a strict search. A door under the staircase attracting my notice, I demanded the key, and then

* Let us assume as fact, merely for argument sake, that Captain S. *did make enquiry*; summoned together the whole crew and servants of the *Phoenix*; and, in addition to a *general caution*, made a *public example by dismissing Wilson*, and *privately* appointing some confidential person to watch over and report the conduct of *others*, (this was precisely the line of duty it behooved him to adhere to, for the future security of his own and his employer's property,) or admitting Wilson, on a promise of future obedience, had been *pardoned*. how is it possible only *four days* after such public example or caution, *ten bales of silk*, (pretty considerable in bulk,) could be introduced without observation on board at *White Hall*? Did no person feel it his duty to let Captain Sherman know of it, or was it likely the eye of *suspicion* resting on Wilson had not prevented it?

sent up for Captain Sherman. The annexed deposition of Robert Davies will shew, that I waited patiently, while by Captain S's. orders, enquiry was making for the key. It became at length necessary to break open the door. In the recess, I found and seized the aforesaid ten bales of crapes and silks. I requested the use of Captain S's. boat to convey them a very short distance, namely, that part of the shore opposite to the Custom House, fearing from the looks of the crew, with my knowledge of the persons usually loitering about the wharf, that a rescue of the goods might be attempted, I landed and delivered them into the hands of the Collector.*

At an early hour next morning, I waited on him for *aid to secure the Phoenix*; as he was not then in the way, I entered the Custom House, provided myself with materials, went on board and branded the Phoenix with the King's mark in due form. At this time, the Collector, who had followed me down, strenuously dissuaded me from affixing the King's mark; not, as I could understand from any motives of public expediency, but personal friendship towards Captain Sherman and the proprietors. Both before, and after, the branding of the vessel, Captain Sherman besought me to name any sum or recompense *for myself*. And afterwards, both the Collector and Comptroller separately advised me to "make the matter up" with Captain S. and let the Boat proceed.† I told these gentlemen, respectively, I would not comply, remit the seizure, or in any manner compromise, without authority, the rights of the King and Governor in Chief; adding, that the whole affair was then in the hands of the Executive.

Soon after, the Collector, sent me by the Comptroller, a letter to the Commanding Officer, (Lieutenant Coltman, 60th regiment,) for *two soldiers*; I presented it at that gentleman's quarters, received the men, and placed

* By his desire, I gave him my assistance in depositing the goods in his own bed chamber; a *proof* he considered even the Custom House an unsafe place, and that very fear, a *stimulous* one would imagine to his exertions the ensuing day to *secure* the Boat, if violence was apprehended for detaining the goods seized on board of her.

† Had I agreed to this proposition, it had been easy for either of them to *report me in form*, as *remitting a seizure for pecuniary compensation*. I know one of them too well to place such a weapon of disgrace and destruction in *his hands*!

them in charge of the Phoenix. Captain Sherman requested me to let him take his trunks ashore, as he was going to town to give bonds for the Boat; the Collector, who was present, said he had business in town and would accompany Captain S. Although the seizing Officer, I was not invited to go with them. About, perhaps, twenty minutes, after these gentlemen had departed for town, and while I was employed in the Custom House, by the Collector's order, * news arrived to me, that the Steam Boat was about starting. The Comptroller, who was present, heard my son deliver this message. The Senior Landwaiter, (who just then came in,) assured me he had seen no appearance of the kind. On receiving a *second message*, I left the Custom House, and despatched the Bailiff Davies to the garrison for more soldiers, and to give the alarm. The Commanding Officer said he would "go down to the Custom House and give the Officers there a *written order* † for more men." While on his way down to town with the Bailiff for this purpose, the crew and servants of the Phoenix, rose upon, and disarmed the sentinels, and carried the vessel out of Port St. Johns.

Whether the planting of those sentinels was *my duty*, or some other persons, I shall not say. By the absence of the Collector, who is also a Magistrate, the town was left without the civil power. I presume not to be a judge in such matters, but it certainly occurred to me, that before his departure for Montreal with Captain Sherman, it would have been no more than a measure of precaution, had he conferred with the Commanding Officer, called out the militia of the place (a few minutes had sufficed to collect a competent number,) to aid, *if needful*,

* Duplicating some tobacco entries, that might I presume have been done at any other time.

† It was a thing well understood, that the soldiers were not to be given to me without the Collector's *special order*. Now, strange as it may seem, that the Commanding Officer should "come down" from the garrison, where his men were *at hand*, to give a written order to "send up for them;" every moment made the exigence more apparent to his own eyes, (the Boat slowly proceeding up the river as he came down there.) I never did insinuate that the least blame attached to him. A proper and *sufficient* requisition should have been made in the *first instance*. Nothing could exceed the spirit and ardour of the soldiers. Two were directly despatched on foot to the Isle aux Noix, to report the outrage and have the Steam Boat detained.

the *few*, but *excellent soldiers* of the 60th, then at the post; placed the Phoenix in a proper state of security, by mooring her, as could easily have been done, *opposite the garrison*; putting out her engine fire, and placing her crew and servants under due restriction from violence or departure. As for me, I received no commands or instructions (after I had planted the sentries on the Phoenix,) from the Collector, Comptroller, or any other person, or assistance of any kind, further than what I have above *truly and minutely* stated; which statement, I am ready to support in the most solemn manner. I trust I have proved an account of this transaction published in the Courant of 28th instant, and in some other papers, to be an exceedingly incorrect one. So far from "misleading Captain Sherman to the loss of his own, and the Company's property, by withholding from him the name of the man whose crime is said to have effected such injury;" *I did name to him*, (several days before the seizure of the Phoenix,) WILSON, HIS PILOT, with a suitable caution; in which caution the Collector of St. Johns appeared very cordially to join me.

(Signed)

BART. TIERNEY,
Guager Port St. Johns.

AUGUST 31st, 1822.

The above "Statement," I drew up with the intention of inserting it in the Montreal Gazette, to rebut certain unfair representations of my conduct and motives, which appeared in the public prints of that period. I shall, in the course of matter in these pages, explain to the reader, why I did not do so; and shall subsequently refer to it, and the following affidavit of Robert Davies, as documents No. 1, and 2.

[DOCUMENT No. 2.]

Port St. Johns, 31st August, 1822.

" I, Robert Davies, do declare on the Holy Evangelists, that to my knowledge it has been customary with Captain Sherman of the Phoenix Steam Boat, to tow down canoes laden with tea, tobacco, and other contraband goods, (knowing those canoes to be so unlawfully laden,) for remuneration; and that the impression on my mind from his conduct and manner on Sunday 25th instant, is, that he was *not* ignorant of the ten-

"bales of crape and silks being concealed in the Steam Boat Phoenix. Further, as district Bailiff, I accompanied the Officer who seized the same, and was myself in the act of forcing the door, (after at least an hour's delay, while the key was searched for,) when Captain Sherman took the chissel to complete the opening I had partly effected.

(Signed)

" ROBERT DAVIES.

" *Bailiff King's Bench.*"

" Sworn before me, one of his Majesty's

" Justices of the Peace, the 31st August, 1822, at L'Acadie.

"

" *LS. DECOIGNE, N. P. J. P.*"

[ENDORSEMENT.]

" Having waited on Mr. Macrae, Magistrate and Collector of St. Johns, on the 31st August, I requested him to read over and receive the above deposition; he threw down the paper, refused to take it, or hear any thing about Mr. Tierney's business.* I then went to L'Acadie, and was sworn by Mr. Decoigne.

(Signed)

" ROBERT DAVIES,

" *Bailiff K. B.*"

On the departure of the Phoenix in the manner above described, from St. Johns, an express † was sent after the Collector and Captain Sherman, apprising them of the circumstance.

The Collector, on his return to St. Johns, the following Wednesday, informed me it was necessary I should instantly proceed to town to take bonds for the Phoenix, my reply was, that had I been required so to do in the first instance, I should undoubtedly have gone there, but as he, the Collector, had been two days in town without effecting that business, as in that time new matter had arisen, viz: the taking off and disarming the King's troops, and rescue of the vessel, I felt unwilling to act without knowing what might be the pleasure of the Go-

* The fact of the Collector refusing to receive this man's deposition, is somewhat extraordinary. Was he a person undeserving of credit upon his oath? If so, why has the said Collector, in his capacity of Commissioner for small causes, &c. &c. received his oath several times since then, as a good and lawful oath? Recognizing it as unimpeachable in the discharge of his duty as district Bailiff.

† Although no horse would be hired to me to pursue the Boat, or was provided for the soldiers to reach Isle aux Noix in time.

since dead,

vernor in Chief—adding, that if his Excellency was not yet informed of the affair, I should, as the seizing Officer, immediately report it. I then wrote to his Excellency by post of the 28th August, 1822.

The Collector, soon after this conversation, set off for Sorel.

On the 30th August, I was under the painful necessity of writing the following letter to his Excellency; to which I subjoin two letters in reply from Colonel Darling, then at Sorel.

[DOCUMENT No. 3.]

Port St. Johns, 30th August, 1822.

My Lord—I trust my letter of the 28th instant, has reached your Excellency's hands, which I was under the necessity of sending by post, as I could not prevail on any person here to set off express. The Collector's extraordinary conduct towards me this morning, who informed me he had had a personal communication with your Excellency yesterday, is the subject of my present letter.

I have borne from him patiently as I could for a long season, adverse behaviour, and since his appointment to his present post, language and oppression of a mean covert nature, I am wholly unconscious of meriting.—Being sent for by him this morning, he said your Excellency had given him orders to turn me out of the office, if I did not obey him in every thing; that it was your Excellency's *command* I should give up to him the name of the informer, by whose means I seized the Steam Boat; it was necessary he should know to take proceedings.—This I *did refuse* giving to him, and repeated as on Monday last, that until I had your Excellency's written commands, I felt myself not justified in interfering further than I had done in the business. I had seized contraband goods, and the Boat which conveyed them; it had been afterwards rescued, without my being able to prevent it, and, that all the rest lay with your Excellency. I had *promised* not to betray the man, and *would not* to him or any one else. I am ashamed and sorry to relate his reply: He called me “*a d—d impudent blackguard!*”

* My first impulse was to fell him to the ground! but a sense of my situation, (having a sword cane in my hand and a pistol in my pocket,) happily restrained me from offering personal violence.

My Lord, humble individual as I am, language of this kind is *new to my ear*, and, as a *man*, I cannot bear it.— I have conscientiously fill the post your goodness appointed me to. Have at this moment, a suffering wife and family about me. The very exercise of my duty has made me enemies to the risk of my life; I cannot say it is safe, while I write. I pledged my word as a man and a christian, I would not betray the person who gave information; I cannot break it, without his consent: He is now beyond the American lines, and his destruction *might follow my treachery*. Was a statement of this, disobedience to Mr. Macrae? and has your Excellency deputed him to insult me, and deprive my family of their bread, for no other fault? I implore justice, and protection, from your Excellency. I address myself with the fullest confidence of receiving both, and I entreat pardon if, in the freedom of this letter, I trespass on the decorum due to your high station as Governor.

I have the honor to be,

My Lord,

Your Excellency's most humble and
Obedient servant,

BART. TIERNEY.

To His Excellency the Earl
Dalhousie, Governor in
Chief, Sorel. }

[DOCUMENT No. 4.]

Sorel, 1st September, 1822.

Sir—Your letter of the 30th to Lord Dalhousie, complaining of the treatment you have received from the Collector of the Customs, has this moment been put into my hands. His Lordship is just now, too much indisposed for me to trouble him with its contents; but, as your messenger waits for an answer, I will venture to express my opinion, that his Lordship would not wish you to disclose the name of the person you allude to, without due consideration; nor would he countenance any ill treatment, or gross language, towards you, in consequence of the sentiments he might have expressed of

I was in great distraction of mind, and almost careless of consequences, when I thus wrote to his Majesty's Representative.

your conduct on the *first* report of this occurrence.*—
Your letter shall be laid before his Lordship to-morrow,
or next day, when his sentiments will be further made
known to you; in the mean time,

I am, Sir, your obedient,

And very humble servant,

H. C. DARLING,

Military Secretary.

Mr. B. Tierney, St. Johns.

[DOCUMENT No. 5.]

Sorel, 2d September, 1822.

Sir—Referring to my letter of yesterday, I have now to acquaint you, that I have this morning brought under the consideration of the Governor General, the representation contained in your's of the 30th; by whom I am directed to say, that he entirely confirms the opinion I had ventured to express. With respect to your disclosing the name of the person from whom you received the information, which led to the seizure of the Steam Boat, his Lordship is aware that the duties of the Custom House can seldom be performed, but on private information, and he therefore neither requires, nor wishes, you to give up the source of your information on the present occasion.

His Lordship hopes that the relative duties of the Collector and yourself, will be conducted on principles that will render future complaints, on either side, † unnecessary.

I am, Sir,

Your most obedient servant,

H. C. DARLING,

Military Secretary.

Mr. B. Tierney, St. Johns.

* This passage clearly indicates that a *false and partial statement* of my conduct *had been made* to his Excellency.

† What complaints were *made of me*, I know not, but, from this time *I made none*; nor did the Collector (that I can speak of *with certainty*.) until the fit opportunity, viz: *when domestic troubles, arising from embarrassed circumstances, agitated my mind, rendering it more susceptible to studied insult*, than would have been the case in a more comfortable state of things. (See page 37, my affidavit.)

About the date of this correspondence, the American General Barnum called at my house, and as I was not at home, left with Mrs. T. (whom he requested to see,*) the draft of a letter, which he wished me to write to his Excellency the Governor in Chief. (The original, in the General's hand-writing, I enclosed, with other papers, some days after to the Governor in Chief.) Its purport was this, that I should state "from my firm reliance on *the word of General Barnum, my conviction that the Steam Boat proprietors had always taken every precaution to prevent the introduction of illegal merchandize into their Boats; that I felt ASSURED of Captain Sherman's entire ignorance of such things being on board the Phoenix; that I believed the outrage on the soldiers, and rescue of the Boat, to have been the act of unfaithful, dishonest servants, and wholly without his knowledge.*" As I could not, conscientiously write such a letter as this, and being still without any orders from Government respecting the transaction, I addressed the following note to General Barnum.

[DOCUMENT No. 6.]

Mr. Tierney has the honour of tendering his respects to General Barnum. He has just read over the draft of a letter, which it appears the General wishes him to address to the Governor in Chief. He regrets he cannot do so, under all the circumstances of the case, without incurring the charge of inconsistency, as before he had any communication with the General, he related and referred the whole matter to the pleasure of the Earl Dalhousie. His Lordship's lamented indisposition prevents Mr. Tierney from knowing, for the present, what his Excellency's determination may be, when he shall

* The drift of the General's conversation with Mrs. T. was, that she should endeavour to prevail upon me to write this letter *as if wholly from myself*, to the Governor; and also *urge me to name the exact sum I expected from the Company for myself, as a guide to their proceedings.* (The General mentioned to her he had had the opinion of his friend Mr. Stephen Sewell, that *it was an illegal seizure*, and that he had promised him his own and the Chief Justice's *whole interest*, to set it aside.)

If the General believed what he said to be *truth*, for what purpose did he require me to demand money from the Company? Was it that I might be *prosecuted for extorting money on false pretences?*

have had his commands. The General and the Steam Boat Company, will find the faithful discharge of his duty to the Country and Sovereign who gives him bread, was more his inducement, than a mercenary desire of enriching himself at the expense of individuals.* He never had any malice or ill will towards Captain Sherman; but to place his own character beyond the possibility of present censure, or future attack, is due to a name he has always endeavoured to uphold without a stain.

To General Barnum,
At Bellamy's Inn, St. Johns. }

On the 10th September, at ten o'clock in the evening, I received a visit from General Barnum, who presented me with a letter from D. Ross, Esq. K. C. enclosing a copy of his Excellency's determination respecting the Phoenix.

[DOCUMENT No. 7.]

Montreal, 10th September, 1822.

Sir—I lately was with the Governor on the subject of the seizure made by you of the Steam Boat Phoenix. An application was made to the Governor to have her delivered up; on which subject he committed his determination to writing, and delivered it to me, and directed that I should furnish you with a copy, which you have herewith. *If the Boat is brought back to St. Johns, you will please settle with the Collector, and for what sum the security is to be taken.*

I am your obedient humble servant,
D. ROSS, K. C.

Mr. B. Tierney,
Custom House Officer, St. Johns. }

[DOCUMENT No. 8.]

In reference to the matter now stated to me by Mr. Ross, I can make no answer, until that vessel shall be replaced in the custody of his Majesty's Customs at St. Johns. I am perfectly satisfied that Captain Sherman

* The fact is, when I wrote this note to the General, I had the liberal feeling it displays. His subsequent behaviour, I confess, enlightened me a little as to his real intentions, and totally changed mine.

has had no share in this double outrage, against the laws of trade on one hand, and against his Majesty's flag, in forcibly carrying off a guard of the military, placed on duty upon that vessel; but the whole outrage is considered by me, an insult to the Government entrusted to my care; which in duty, and in honour, I will protect to the utmost of my ability. The course I have resolved upon, is this, to insist upon the restoration of the vessel, in the first place, to St. Johns;* and in the next, to guide myself in future steps, by the advice of his Majesty's Executive Council in this Province, and the opinion of the Law Officers of the Crown.

(Signed)

DALHOUSIE.

SOREL. 8th September, 1822.

P. S.—In the desire to restore the intercourse as soon as possible, I shall have no objections to give up the vessel to her usual course, on sufficient bonds being given by the proprietors, to await the final decision of the subject.

(Signed)

D.

(A true copy from the original.)

D. ROSS, K. C.

The issue of the General's visit, will be best explained by the following letter to the Earl Dalhousie, wrote and sent by me the following day to Sorel, enclosing the correspondence which had passed between General Barnum and me. "The Statement" (Document No. 1,) I had prepared for the press, respecting my conduct, with the affidavit of Robert Davies, (Document No. 2.)

[DOCUMENT No. 9.]

Port St. Johns, 11th September, 1822.

My Lord—Finding myself placed in a situation of some difficulty, by the occurrences of last evening, as they respect the late seizure of the Steam Boat Phoenix, I presume again to intrude on your Excellency. Some

* It is notorious, that instead of the unconditional and immediate surrender demanded by Earl Dalhousie in September. 1822, the Phoenix was kept up at Champlain with an armed crew, and regularly mounted watch.

The intercourse, in the meantime, fully subsisting. The Congress, during the remainder of that season, plying to and from Port St. Johns,

days ago, the American General Barnum called upon me * for the purpose of ascertaining what my demand would be upon the Steam Boat proprietors, provided your Excellency, on certain representations being made, should be pleased to relinquish for yourself and the Crown; and requesting that it might be moved, in the first instance, by the medium of a letter to your Excellency from me.

I enclose the correspondence marked, Nos. 1, 2, 3, and 4, between General Barnum and me.

Last evening, 10th September, he came to my house, after the hour of ten, presenting a letter from D. Ross, Esq. K. C. enclosing a copy of your Excellency's determination respecting the Phoenix. Having read those papers, the General proposed to me, the proprietors of the Steam Boat giving bonds for one thousand pounds, "*merely to bring back the Boat to St. Johns.*"† Agreeably to Mr. Ross' intimation, "that I should settle with the Collector the amount of security to be taken," I wrote to that gentlemen (by General Barnum,) deferring to him, as head of the department here, whether such bonds were the *sufficient ones* alluded to by your Excellency, and if so, my willingness to empower Mr. Ross to take the same. The General, soon after delivered to me Mr. Macrae's reply, concluding with this sentence, "that he was satisfied, provided (as the person most immediately concerned,) that it was considered sufficient by me;" this led to a further discussion with the General, who required me to endorse upon Mr. Macrae's note, that I accepted, as *my full share* and *individual* acquittance of the Steam Boat proprietors, the penalty of the bond, viz: £1000. This I refused doing, seeing nothing in Mr. Ross' letter to me, or in your Excellency's commands, of which he had enclosed me a copy, to warrant me in

* At my house, in the manner formerly described, page 16.

† These were the General's express words, from which, on his return in half an hour with the Collector's note to me, he *totally varied*. He then *first* demanded I should *endorse, &c. &c. &c.* I was actually on the point of signing to accept bonds for £1000. until hearing this *new* proposition. I perceived some *under meaning* in the business, and then insisted on eight thousand dollars, and *that* only for the purpose declared in his Excellency's decision.

The General did not part with me *on quite the best terms*. He has since thought proper to *deny this*, knowing my wife cannot be my witness, and that his attendant (who was present,) is dead.

presuming to make any bargain or agreement whatever for *myself*, while the "future steps," named as to be taken by your Excellency, remained to be gone through and settled. I said, that as the amount of a *provisional bond*, namely, for the express purpose of bringing back the Boat to St. Johns, seemed finally to be left with me, I should venture in a note to Mr. Ross, (then given by me to the General,) to empower him to accept eight thousand dollars, a small sum with regard to the proportion it bore to the value of the Phoenix. General Barnum left me with an assurance the proprietors never would agree to such terms, or bring down the Boat, until satisfied, one thousand pounds should be *named and accepted by me* as the full and final claim on them. The General also observed, that the copy of commands, furnished me by your Excellency's order, *was merely an official form*, your Lordship's real intentions (confidentially made known to Mr. Ross,) were, that on a proper apology for the outrage on the soldiers, and disrespect to the British flag, you would relinquish your own and the share of the Government, leaving the proprietors to settle with me. The determined tone of the paper bearing your Excellency's signature, being so much at variance with this statement of General Barnum, and no allusion of the kind being perceivable in Mr. Ross' letter to me, I would agree to no other than the acceptance of bonds to the above amount, for the Boat's coming down in the first instance, agreeably to your Excellency's demand, and as the basis of further measures. If wrong, my wish to act in strict conformity to my view of the meaning of your Excellency's written decision, will I trust ensure to me your pardon.

My original intention in seizing this Boat was, that a loss of magnitude might give an exemplary check to the immense smuggling at this Port, not unmixed, I will candidly own, with a desire of eventually benefitting my own and helpless family's circumstances.* If not too intrusive for a man debarred by his humble station, of immediate access to your Excellency, I will venture to assert, that the real facts of this case have not yet come

* Will any gentleman holding an office in any public department in the Canadas, or elsewhere, deny that he endeavours to make the most (in a lawful way,) of his situation?

fully before your Excellency's consideration. It was proposed to me by some friends, who felt for the public obloquy thrown on my character, by misrepresentations in the newspapers, to publish a statement of the whole transaction respecting the seizure of the Phoenix. I presume enclosing, for your Excellency's perusal, what I had prepared for the press, can swear to, and if necessary, summon witnesses to prove;* (together with the deposition of the district Bailiff Davies.) The difference that arose between Mr. Macrae and me, induced me to consider it ungracious at such a time, nor did I wish, unless driven to it in my own defence, to reflect upon the character of Captain Sherman. I repose myself wholly (as I have ever done,) upon your Excellency's justice. You *may* have heard partial accounts of the transaction generally, and of me in particular.

I am, My Lord, with dutiful respect,
Your Excellency's most humble servant,
BART. TIERNEY.

To the Earl Dalhousie, }
Governor in Chief, &c. Sorel. }

[DOCUMENT No. 10.]

Sorel, 14th September, 1822.

Sir—I have it in command from his Excellency the Governor in Chief, to acknowledge the receipt of your letter of the 11th instant, with its several inclosures, and to acquaint you, that he is quite satisfied with your conduct, both with respect to the seizure of the Phoenix, and in the subsequent transactions between General Barnum and yourself, now first reported by you; and I am to recommend to you to adhere to the same moderate and prudent course you have hitherto pursued in this affair. His Excellency directs me to state to you, that your construction of his written decision as delivered to Mr. Ross, has been perfectly correct, and that he never intended to hold out the expectation of any compromise for the relinquishment of the seizure, which should not have for its basis the previous unconditional surrender of the Boat to the place and state in which she was when

* At that time I could have called upon *several* now out of my reach; but the facts related being *well known*, renders it of little consequence.

carried off, in violation of the laws, and to the insult of the authority of Government.

With respect to the statement in defence of your conduct, which you propose to insert in the newspapers, his Excellency does not see the necessity of it, and cannot give it his sanction,* but leaves you to act in this matter upon your own responsibility and discretion.

I am, Sir,

Your most obedient humble servant,

ANDREW WILLIAM COCHRAN,

Secretary.

Mr. B. Tierney, St. Johns.

From the date of the above letter, I had no further communication with Government (respecting the Steam Boat Phoenix,) for several months. I did hear reports, from time to time, that proceedings of some kind or other were instituted, but of what precise nature, I am to this hour wholly uninformed.—Well aware that a net was spreading in all directions to entangle me, the line of conduct I laid down to myself was this, never to address a single sentence to my superior in office, or his colleague, except what was unavoidably necessary for transacting my proper business in the Custom House.

In March last, a direct proposal came to me from the Steam Boat proprietors, through William Watson, Esquire,† of St. Johns. I immediately apprized his Excellency of it by letter.

[DOCUMENT No. 11.]

Port St. Johns, 20th March, 1823.

My Lord—I beg leave to inform your Excellency that on Monday last, I received a visit from Captain Watson

* I never once entertained an idea that his Excellency would merely placed it (without its present notes,) before him, that he might learn from it the facts of a case, evidently misstated; the very motives named at the close of my letter to his Excellency, still existed in my mind against its publication; I shrunk from no "responsibility," my statement being *truth*; but, preferred patient endurance, in the hope of eventual justice, rather than a commencement of "paper war," which my humble talents in a great measure disqualified me to sustain.

† I had, for good reasons, declined for some time, any personal communication with General Barnum.

of this place, who came to me as the agent or friend of the Steam Boat Company, to make to me the following proposal: "that I should write to the Steam Boat proprietors, wholly renouncing my claim upon the Steam Boat *Phœnix*; in consideration of which, a certain sum should be given me *privately* by way of remuneration, or, if more agreeable, as a present to my wife.—The Boat, at the opening of the navigation, should be sent down to St. Johns, and your Excellency applied to, to relinquish your own and his Majesty's share in the seizure."—As formerly, my answer was, that I felt myself not justified in taking a single step without your Excellency's authority; but that *nothing like the proposed arrangement should ever originate with me.** It has been distinctly stated, that unless such arrangement shall be made, the proprietors *will never* send the *Phœnix* to St. Johns.—I felt it my duty to make this matter known to your Excellency.

I have the honour to be, my Lord,
Your Excellency's most humble servant,
BART. TIERNEY.

To his Excellency the Earl }
Dalhousie, Governor in }
Chief, &c. &c. &c. }

I understood Captain Watson immediately delivered to the General the answer I gave to this curious proposition; and that he in consequence directly set out for Quebec.—Nothing further transpired until the 5th April, when I received the following letter from General Barnum, by the hands of Captain Watson, of whose accompanying message, or conversation, I directly made "a minute."

[DOCUMENT No. 12.]

St. Johns, 5th April, 1823.

Mr. B. Tierney,

Sir—His Excellency the Governor in Chief has been pleased to say to me, that he has directed the Collector

* Yet General Barnum in his letter to the Chief Justice Sewell of the 27th March, deliberately and unequivocally says, "Mr. Tierney, who is now desirous of relinquishing his claim, &c. &c. The public will judge for themselves, and no doubt appreciate as they deserve the *veracity* and *honour* of General Barnum."

of Port St. Johns to stop proceedings in the case of the seizure of the Steam Boat Phoenix. It was also intimated from a Public Officer of the Crown, that it would be pleasant to his Lordship if we were to make you some *trifling present*; and has, I understand, authorized you to make such private arrangement as might be considered pleasant to all parties, and give a discharge to the Company for all claims you might, or could have, upon the Boat, in consequence of the aforesaid seizure. I have therefore authorized my friend Captain Watson to offer you one hundred pounds, and receive a proper discharge. I wish it done in a manner that would be the most pleasant to you, and any discharge you may give, will be made no other use of than that of being kept by the Company, to be produced only in case of necessity, which I hope and presume will never occur. The Governor having given you this power, * I see no necessity for any delicacy on the subject; however, should it be more pleasant to you, the amount presented will be kept entirely to ourselves, with the exception of our friend Captain Watson. We shall have no earthly object for disclosing it. Should you decline this proposition, you will oblige me by giving me notice as early as convenient, as I am anxious to leave town as soon as may be.

Your's respectfully,

A. W. BARNUM.

[DOCUMENT No. 13.]

[Minute of a conversation with Captain Watson, 5th April, 1828, on B. Tierney being presented by him with General Barnum's letter of that date.]

Captain Watson stated on the authority of General Barnum, (and as corroborative of his letter); "The Governor in Chief is now convinced the seizure of the Phoenix was an *illegal act*. His Excellency, in a conversation with General Barnum, gives her up as such to her owners; considers the apology offered for the taking off

* As I was not made acquainted with the Governor in Chief's pleasure, until *twenty days* after this letter from General Barnum, and as I had no *guarantee*, but the *general's word*, I certainly declined acting upon it. Taken altogether, this letter abounds with contradictions to the General's former assertions which I could not reconcile, or indeed properly understand.

the troops, a sufficient one; that the Guager Tierney ought to be satisfied with his third share * of the contraband goods seized. His Excellency don't think him entitled to any thing, unless the proprietors generously see fit to make him *a present*. Chief Justice Sewell being then applied to for his opinion regarding the amount to be given, named *ten pounds* as enough, or more than enough. General Barnum, however, wishing to make Mr. Tierney a recompense for all he had, or might, suffer from this business, desired to make the present one hundred pounds, conditionally, Mr. Tierney never annoy the Boats again, if continued in office, which was doubtful."

B. Tierney replied, "He never would move until he had his Excellency's *official commands* as his guide.— Either *he had* a claim to a *third* of the Boat's value, or *he had not*; if the latter case, then he would not accept a *single shilling*, or be his continuance in office long or short, do, or agree to do, any thing contrary to the duties of that office he had sworn conscientiously to fulfill. If the Boat was a legal seizure, he would pursue his claim. Matters having arisen since its capture to convince him, the Boat's crew and servants committed the act of violent departure according to Captain Sherman's orders, or with his knowledge, † and the aid of sundry inhabitants of St. Johns. In return for the greatest forbearance and delicacy towards the character of Captain S. the proprietors, and *other persons*, he had had *his* character scandalized both in Canada and the United States, and his life and family's welfare in jeopardy several months. The value of the Phoenix was estimated generally at eighteen or nineteen thousand pounds, the sum offered him no way adequate."

I considered the following note, directly sent by me to General Barnum, the only reply I *could* make to such

* I never credited for a moment that his Excellency descended to make any such remark. His Majesty and Earl Dalhousie received shares the same as mine of the net proceeds; but, having from my share to ratify my engagement with the informer, my entire gain on that much talked of seizure, was twenty-two or three pounds!

† See the deposition of *Davies*, that the Captain "aided and abetted" in smuggling, see that of Mr. John Stewart, in page 45, that Captain Sherman was *within hearing* when his steward was clearing the vessel of strangers, and announced her *immediate departure*.

— who received one hundred pounds as a *present*

£

366

communications as his letter, and the conversation of his friend.

[DOCUMENT No. 14.]

Port St. Johns, 5th April, 1823.

Mr. Tierney has the honor of acknowledging General Barnum's letter of this day's date; he laments his inability to reply to it, as he has not lately received any regular official communication of his Excellency the Governor in Chief's pleasure on the subject.

The General must be aware, verbal intimations (no matter how respectable the source they come from,) are not to be considered sufficient authority. And this observation he is led to make, as on looking over the *last commands* * he received respecting the Phoenix from his Excellency the Governor in Chief, he finds them to be completely at variance with General Barnum's present letter, and the communication of Captain Watson.

To General Barnum, }
Bellamy's Inn, St. Johns. }

Having waited several days in the expectation of some instructions; having made repeated endeavours to gain a clear and certain guide for my conduct, from what I imagined the proper and natural quarter; I at length felt compelled once more to address his Excellency.

[DOCUMENT No. 15.]

Port St. Johns, 14th April, 1823.

My Lord—I have the honour to enclose for your Excellency's perusal, copies, of a letter received by me 5th instant from General Barnum, "a minute" of an accompanying message delivered to me by the bearer of the letter, Captain William Watson of this place, wharfinger to the Steam Boat Company, with my answers to the same. Influenced by the same feelings as when I presumed to address your Excellency on the 20th March, I now submit these papers for your inspection, † conceiv-

* Viz. the letter dated *Sorel*, 14th Sept. 1822, page 21, to which the reader will refer.

† By which his Excellency was made aware that I wholly rejected the offer of one hundred pounds, and of my sentiments generally,

ing it to be most proper and dutiful course, as I am still without any direct instructions either from your Excellency, or the head of the department here, relative to the line of conduct I am to pursue with respect to the Steam Boat Phoenix, should she (as it is generally expected,) come down here the ensuing week. Having hitherto implicitly obeyed your Excellency's commands in all that has regarded the Phoenix; steadily adhering to that obedient and guarded deportment towards my superiors in office, which "should prevent the necessity of complaint on either side," so condescendingly recommended to me by your Excellency's command. I humbly hope I shall find that there is no foundation for a report current here, "that your Excellency has determined upon dismissing me, directly the affair of the Steam Boat shall have been settled;" the name too of my expected successor in office has been mentioned. Relying on the honour and justice of your Excellency as my safeguards from evil designers,

I have the honour to be, with profound respect,
Your Excellency's most humble servant,
BART. TIERNEY.

To his Excellency the Earl }
Dalhousie, Governor in }
Chief, &c. &c. &c. }

[DOCUMENT No. 16.]

Castle of St. Louis, Quebec, 19th April, 1823.

Sir—I am directed by his Excellency the Governor in Chief, to acknowledge the receipt of your letter to him of the 14th instant; and I am in reply thereto, to refer you to the Collector of the Customs of Port St. Johns for communication of my letters to him of 29th March and 8th instant, which will put you in possession of his Excellency's views and intentions with respect to the Steam Boat Phoenix.

I have the honour to be, Sir,
Your most obedient servant,
A. W. COCHRAN.

Mr. B. Tierney, St. Johns.

as to the base and ungenerous means used to defame me, as well as those resorted to, to bring me into compliance with General Barnum's terms.

The above letter came to my hands at eight in the morning of the 23d April, just as the Phoenix was coming into Port. The Collector, who had been some days absent from St. Johns, returned and *cleared her out*. Four or five hours *after* which event, he presented me with copies of the letters alluded to by Mr. Secretary Cochran, together with that of one from General Barnum to Chief Justice Sewell, dated Quebec, 27th March.

[DOCUMENT No. 17.]

Quebec, 27th March, 1823.

Sir—I take the liberty of enclosing you a brief statement of our case, in regard to the unpleasant situation of our Steam Boat on Lake Champlain, which, if consistent with your feelings, I beg of you to lay before his Excellency the Governor in Chief. The anxiety of the Company is increased on this subject, from the circumstance of a suggestion having been made, that we had not sufficient confidence in the assurances of his Excellency, made to Mr. Ross. The fact is otherwise, we have the most unbounded confidence * in his answer to do us justice, and restore the intercourse. I should do injustice to my own feelings, were I to omit to express my gratitude for the very liberal interest that has been taken in our behalf, by the respectable citizens of Montreal and Quebec, with whom we have had an opportunity of conferring † on the subject.

The seizing Officer, Mr. Tierney, ‡ *who is now desirous*

* I have already said, the "intercourse" never *was* impeded; the Congress, the Company's other vessel, continuing to ply; but in what way was this "unbounded confidence" shewn! did the proprietors *instantly* and unconditionally surrender the Boat in September, when demanded as a *sine qua non* by Lord Dalhousie? Who armed her crew and kept her in utter defiance at Champlain. Why not *next day* or *next week* after the seizure, come forward with this affidavit of Captain Sherman, and the *apology* and offer, which after *eight months*, the Earl Dalhousie thought fit to receive. Why lose so much valuable time in little paltry disingenuous negotiations with me?

† Did the General carry with him into these "conferences" the spirit of truth?

‡ My letter to him of *5th April*, is in itself an *evidence to the contrary*. He left St. Johns the *20th March*, perfectly satisfied, I *never* would give up my claim, yet thus writes to the Chief Justice *ten days* after.

of relinquishing his claim, is not sufficiently instructed to feel warranted in doing so, without permission from his Excellency the Governor. It is of the utmost importance to us, that his Excellency's pleasure might be communicated as early as possibly convenient, as the navigation will shortly open in our country, and previous to the commencement of our operations, if we run the *Boat* this season, important repairs and reparations are to be made, which will require all the intervening time. I have also taken the liberty of enclosing you Captain Sherman's affidavit. I believe your Honour's acquaintance with the public and private character of that gentleman is such, as to render any remarks upon the subject of his integrity useless.

I have the honor to be, &c. &c. &c.

A. W. BARNUM.

Chief Justice Sewell.

[DOCUMENT No. 18.]

Castle St. Lewis, Quebec, 29th March.

Gentlemen—His Excellency the Governor in Chief having had a farther application made to him from the proprietors of the Steam Boat *Phoenix*, for permission to bring her back, and that she may resume unmolested her usual passage on Lake Champlain to St. Johns; and having considered from the very first that neither the proprietors nor the master of the Boat were to blame in the rescue of her, which took place at St. Johns in September last, * but that it was altogether an act of their servants, † in their absence. I am now to acquaint you, that his Excellency is perfectly satisfied with the explanation and offer lately made by General Barnum, on the part of the proprietors, to *replace the Boat in your custody*, ‡ and so soon as a letter expressing the sentiments

* A mistake: 26th August, 1822.

† Were those dishonest, unfaithful servants, denounced by General Barnum, publicly punished by some competent tribunal in their own country? How long after the rescue of the *Phoenix*, and her detention at Champlain, did *Wilson, the pilot*, remain in their service?

‡ Query. Was the *Phoenix*, correctly speaking, ever in their safe keeping? One went to town and left her, as I have already shown, without a sufficient guard, or without any arrangement in case of departure; the other gave no assistance, took no prompt or active measures, in his colleague's absence, to remedy this oversight.

communicated to his Excellency by General Barnum on behalf of the proprietors, through the medium of the Chief Justice, shall be presented to you. It is his Excellency's wish to cause the proceedings to stop, and to allow the affair to pass without further notice.* *At the same time, however, as the seizing Officer has a fair claim to be remunerated, his Excellency allows him to settle that claim by private agreement, but does not wish to hear any thing further respecting it.* This letter will be delivered to you by one of the proprietors, † or by the master of the Steam Boat.

I have the honour to be, Gentlemen,

Your most obedient servant,

(Signed)

W. A. COCHRAN.

To the Collector and Comptroller, }

St. Johns. }

(A true copy—Wm. Macrae—25th April, 1823.)

N. B. This letter, with its enclosure, was received only 16th April.

[DOCUMENT No. 19.]

Castle of St. Lewis, Quebec, 8th April.

Gentlemen—With reference to my letter to you of 29th March, I am directed by his Excellency the Governor in Chief, to transmit to you a copy of a letter from General Barnum to the Chief Justice, and to acquaint you, that the arrangements mentioned in my letter is only to take place, when the Captain of the Steam Boat Phoenix shall on her arrival at St. Johns present to you a letter on the part of the proprietors, to the same purport as that herewith enclosed to you.

I have the honour to be, Gentlemen,

Your most obedient humble servant,

(Signed)

A. W. COCHRAN.

To the Collector and Comptroller, }

St. Johns. }

(A true copy—Wm. Macrae—25th April, 1823.)

* Why then was it intimated to me, 5th April, that the Boat was not legally seized, when His Excellency, by allowing my "fair claim," placed it beyond dispute?

† General Barnum accordingly did arrive at St. Johns on the 5th April, and the reader, looking to his letter to me of that date, will find he was perfectly well acquainted with the arrangements to be made,

On reading the above letters, I felt it necessary to address the subjoined to the Collector of St. Johns, sending to him a gentleman to obtain the favour of his dating their presentation to me.

[DOCUMENT No. 20.]

Port St. Johns, 25th April, }
1 o'clock, P. M. }

Sir—On reading over the copies of the two letters from Mr. Secretary Cochran, bearing date, 29th March and 8th instant, *now first made known to me*, as being his Excellency's views respecting the Steam Boat Phoenix, I perceive you have omitted to date the day of their presentation to me, after your signature to them as true copies.

Will you, Sir, be so obliging to do so?

General Barnum's letter to the Chief Justice Sewell, really astonishes me, as I am perfectly ignorant of there being any document in existence purporting to be a relinquishment of my claim, or, unless the grossest perjury was resorted to, (far be it from me to suspect such,) *any expression* of mine, which could warrant the General's allegation. I have also to express my regret, that instead of giving me copies of any instructions you had received from his Excellency, (when I respectfully applied to you for such, several days ago,) you replied you had no orders to do so; moreover, "*that such was a paragraph, or part of a letter or letters, relating to private business of your own and Mr. William Lindsay's, * which, of course, I had no right to see.*" In the copies you have within this half hour been so good to give me, I confess I see nothing of the latter character, and as they appear to relate wholly to the business of the Boat, I wish you had given them to me at an earlier period. Your absence too from St. Johns,

although I was kept in ignorance of the same (officially) for 20 days after. There is from Mr. Cochran's concluding line, a strong presumption that General Barnum put into the hands of the Collector on 5th April that letter of 29th March which he marks as not being received by him until the 16th April—at all events, Mr. Cochran's second letter of 8th April must in due course of post have been in his hands on the 11th or 12th of the month: Had either been communicated to me, I should have had time to take measures for securing that remuneration His Excellency evidently intended I should receive.

* I request the reader to refer to this passage when reading my defence in page 39.

during the whole time the Phoenix remained here this trip, with Mr. Lindsay's assurance to me, that *he* could give or sign no document for my guidance, until your return, left to me no other resource than that of taking the best and safest legal step my judgment presented, that of *protesting* against the Boat's departure, until such time as my claim had been adjusted. This I did when General Barnum did not come forward in reply to my letter to him, and while the Custom House here was without its head for me to communicate with. Your return, a few minutes previous to her leaving Port, I did not know until I attended as usual at the office.

I am sure, Sir, under all the circumstances of the case, you will join me in thus regretting your absence at so critical a time, which absence I cannot believe to have been intentional, or with any view of its further embarrassing me. You knew my sentiments on Monday last;* that I had in no possible way relinquished my claim; and the *protest* of last night records the fact. I presume it was presented to you on your arrival, therefore, any taking away of the Boat by General Barnum, Captain Sherman, or any other individual, was without my consent, contrary to the purport of his Excellency's commands, and, in as far as respects me, I should imagine, a very illegal act.

I have the honour to be, Sir,

With much consideration,

Your most obedient humble servant,

BART. TIERNEY.

To Wm. Macrae, Esq. Collec- }
tor of the Customs, St. Johns. }

I was immediately advised to take the proper legal steps for the prosecution of my claim on the Phoenix; but I still preferred an appeal to his Excellency the Governor in Chief, whom, I had reason to believe, did not

* When he very kindly advised me to take "what I could get from General Barnum, lest I should get *nothing*," this led to the demand for any "instructions," &c. (denied to me on the plea in this letter) I said I would *never* relinquish my claim, or accept such offer as had been made me by the general, or listen to any proposal whatever, until I *actually* saw my authority to do so from the Governor.

Had the Collector, or had he not, a letter or letters then in his hands, copies of which would have fully instructed me how to act if *then* given to me?

know the treatment I had received. I therefore addressed to him the following letter.

[DOCUMENT No. 21.]

Port St. Johns, 26th May, 1823.

My Lord—By the tenor of two letters, bearing dates, 29th March and 8th April last, addressed by your Excellency's command to the Collector and Comptroller of this Port, to which I was referred in Mr. Secretary Cochran's letter to me of 19th April, as expressive of your Excellency's final determination regarding the Steam Boat Phoenix, (but which letters I did not see until *after* that vessel had been cleared out on the morning of the 25th April,) I found myself in a great measure restricted from further troubling your Excellency on that subject. The conduct observed towards me, respecting those letters, and the matters subsequently occurring, I have reason to believe, are either not known to your Excellency, or that they have been incorrectly reported. I presume then, once more, to bring the affair under your Excellency's consideration, fully persuaded that you cannot fail feeling highly indignant, that so little regard has been paid to your Excellency's wishes, or deference to your decision, by the proprietors of that forfeited vessel, to whom you have been pleased to show so much leniency. Up to this hour, I am without "remuneration" for the "fair claim" your Excellency was of opinion I had on that seized vessel, and which you allowed me to settle with the proprietors, if I pleased, by private agreement. The Collector, was absent from St. Johns on the 23d April, when the Phoenix came into Port. I had *that moment* received Mr. Secretary Cochran's letter of the 19th. After some intreaty, I succeeded in obtaining from the Comptroller, an extract, or part of a paragraph, of a letter, *unsigned and undated*, yet, on the strength of this no-document, ventured on writing a proposal to General Barnum for an amicable adjustment. This gentleman did not accord me the civility of an answer; read my letter (as I was afterwards informed,) to a circle of drunken boors in a common tap-room, and grossly abused me.* The enclosed is the co-

* Calling me, "that B—kg—d Thief Tierney," with other ribald appellations. I have not since met with the General.

py of a letter I addressed on the 25th April to the Collector of the Customs, after the clearance and departure of the Boat. I trust it will be found explanatory of the transaction it refers to, and of the step I found myself compelled to take. In conclusion—from the 14th September, 1822, when I had the satisfaction and honour of receiving a letter from Mr. Secretary Cochran by your Excellency's command, approving my conduct, and directing me to persevere in a prudent course, acknowledging that I had rightly construed your Excellency's sentiments, as expressed to Mr. Ross, (a circumstance flatly denied by implication in General Barnum's letter to Chief Justice Sewell; and, as it were, made a principal ground, together with Captain Sherman's affidavit, for the relinquishment of his Majesty's and your Excellency's claims to that seized vessel;) I was kept in complete ignorance of what steps were taking, or what the result was to be, until I saw the Phoenix come in and depart. All proposals made to me in the interim, (I allude to my letters of 20th March and 14th April last,) I dutifully submitted to your Excellency, presuming to do nothing *of myself* in the affair. The parties concerned had time in the interval to create a powerful interest; as subservient to this end, my character and motives have been defamed by them to the community. Urged by that high feeling, inseparable from the character of a British Nobleman, your Excellency doubtlessly disdained to gain at the expense of those, whom you were led to believe innocent sufferers; and the advantage I had by law a right to, (if the taunts and declarations of those above are to be listened to as truths,) is to perish with it. Your Excellency's merciful decision it does not become me to question; I shall only say, that the dependence I have ever placed on your justice, still remains, and leads me to hope, that you will interfere and order satisfaction to be made to me; a matter I should not now so strenuously seek, but for the evils brought upon me by the conduct I complain of, and because that nothing has occurred to alter my sentiments of the circumstances attending that seizure, since reported to your Excellency in September last. Had I then published that justification of my conduct, a sketch of which I submitted for your Excellency's perusal, and followed it up by the evidences I could have then easily collected, your Excellency had

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perhaps never heard of such a document as the affidavit of Captain Sherman, "that the taking off the Boat, and the King's troops, was the act of his servants and crew, and wholly unknown to him, but although certain

*John I come to a trial & that He
Wilson & put on his Oath have told
Sherman before he
and do
time on
Captain*

*His Excellency the Earl
Dalhousie, Governor in
Chief, &c. &c. &c.*

[DOCUMENT No. 22.]

*Castle of St. Lewis,
Quebec, 2d June, 1823.*

Sir—I am directed by his Excellency the Governor in Chief, to acknowledge the receipt of your letter to him of 26th May, with the accompanying documents respecting the arrangements for the release of the Steam Boat Phoenix, and to acquaint you, that his Excellency considers

* It is not a little remarkable that immediately after the General had, in this honourable way, managed to bring in the boat, and put beyond dispute the immaculate integrity of his friend Captain Sherman, he sold out all his shares in the Phoenix, and ceased to be one of the proprietors. I rather suspect another individual whom I could name took the General's hint, and withdrew his shares from the firm. "A giant in knowledge is seldom to be met with in Vermont; but in no country perhaps are the people more practically knowing in their common occupations." Spafford's Geography.

*There was a General report at the time in St John
that Colletta & Co had themselves shares in the Phoenix
& sold out or transferred*

py of a letter I addressed on the 25th April to the Collector of the Customs, after the clearance and departure of the Boat. I trust it will be found explanatory of the transaction it refers to, and of the step I found myself compelled to take. In conclusion—from the 14th September, 1822, when I had the satisfaction and honour of receiving a letter from Mr. Secretary Cochran¹ Excellency's command, approving me recting me to persevere in a ———— ledging that I had ———— sentiments. ————

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me to hope, that you will interfere and order satisfaction
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that seizure, since reported to your Excellency in Sep-
tember last. Had I then published that justification of
my conduct, a sketch of which I submitted for your Ex-
cellency's perusal, and followed it up by the evidences I
could have then easily collected, your Excellency had

*had the business made a little
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be known to Mr. Tierney
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perhaps never heard of such a document as the affidavit of Captain Sherman, "that the taking off the Boat, and the King's troops, was the act of his servants and crew, and *wholly unknown to him*; but although certain considerations have removed some, and death, others, from this place, the law, I humbly imagine, leaves *me*, with respect to the seized vessel, as I was the hour I seized it; and that your Excellency will be graciously pleased to let me have all its benefits, I have no manner of doubt.—The assertion in General Barnum's letter to the Chief Justice, "Mr. Tierney, who is how *desirous* of relinquishing his claim,"* is a most shameful dereliction from truth, but quite consistent with all that has fallen under my observation, in my communication with that gentleman. I intreat your Excellency's indulgence for this freedom of style, and waiting, as I must do, with anxiety, your favourable notice towards my affair.

I have the honour to be,

My Lord,

Your Excellency's most respectful,

Very humble and obedient servant,

BART. TIERNEY.

o his Excellency the Earl
Dalhousie, Governor in
Chief, &c. &c. &c. }

[DOCUMENT NO. 22.]

Castle of St. Lewis,
Quebec, 2d June, 1823. }

Sir—I am directed by his Excellency the Governor in Chief, to acknowledge the receipt of your letter to him of 26th May, with the accompanying documents respecting the arrangements for the release of the Steam Boat Phoenix, and to acquaint you, that his Excellency considers

* It is not a little remarkable that immediately after the General had, in this honourable way, managed to bring in the boat, and put beyond dispute the immaculate integrity of his friend Captain Sherman, he sold out all his shares in the Phoenix, and ceased to be one of the proprietors. I rather suspect another individual whom I could name took the General's hint, and withdrew his shares from the firm. "A giant in knowledge is seldom to be met with in Vermont; but in no country perhaps are the people more practically knowing in their common occupations." Spafford's Geography.

There was a General report at the time in St John's
that Col. John Collins had himself share in the Phoenix
& sold out or transferred

the subject at an end, as far as his interference is concerned.*

I have the honour to be, Sir,

Your most obedient humble servant,

A. W. COCHRAN.

Mr. B. Tierney, St. Johns:

Upon the receipt of this letter, I made up my mind to commence legal proceedings for the recovery of what, under the peculiar circumstances of my case, I consider my *just and acknowledged right*. This determination, becoming known to, or at least suspected, by certain *interested* and adverse parties, was immediately productive of fresh plots to persecute, defame, and deprive me of my situation *in good time*. I do not hesitate acknowledging, that I have been so unfortunate during the three years I held the situation of Guager at St. Johns, as to be unable, either to discharge or liquidate *a few debts*, contracted prior to my appointment to that office. In consequence of some malicious reports being spread in Quebec, that I was in circumstances † to pay, but unwilling to do so; one creditor thought proper to sue me, and an execution against my effects was actually levied in St. Johns, at the very time ‡ of the late *fracas* between me and the Collector of the Customs; which led to the following correspondence with Government, and my consequent dismissal from my situation in the Customs.

[DOCUMENT No. 23.]

Castle of St. Lewis, Quebec, 27th August, 1822.

Sir—The Collector at the Port of St. Johns having made a complaint against you, substantiated by affidavit, of gross and insulting language, used by you to him, in the Custom House, when in the discharge of his duty, together with other allegations of misconduct; I am directed by his Excellency the Governor in Chief, to desire that you will forthwith repair to Quebec, to clear

* Leaving it to me (by inference) to seek my right the best way I could.

† *Arising from my profitable seizure of the Phoenix!*

‡ The Collector was aware of the painful situation of my family. A man of any humanity or delicacy had avoided any dispute or insulting language at such a crisis.

yourself of those charges, if you have any defence to make.

I am, Sir, your most obedient servant,
A. W. COCHRAN.

Mr. B. Tierney, St. Johns.

Particular circumstances rendering it inconvenient (or rather impossible,) for me to proceed to Quebec; and as an *affidavit* was the mode of preferring a complaint against me, I considered I might resort to the same, to rebut the accusation: accordingly made mine, touching the facts of the case, before Mr. Decoigne, Magistrate at L'Acadie; which affidavit, with such defence as I could justly offer, I directly transmitted to Mr. Secretary Cochran. I subjoin copies of both papers.

[DOCUMENT No. 24.]

Affidavit of Bartholomew Tierney, Guager at Port St. Johns.

On the 13th day of August, 1823, I received information that twenty boxes of type, with other matters, were about being smuggled in by, or for, a person named *Sparhawk*, a Printer, or Editor, in Montreal; I sat up the whole of that night watching for them, with the intention of seizing them as contraband; conceiving it my duty. Between the hours of eight and nine, (to the best of my recollection,) on the morning of the 14th August, I saw, lying in a bateau, articles, such as my information described; directly I saw a man in whose custody they appeared to be putting them into a cart or waggon, I came forward and seized the property. This individual then stated to me, that there was an order from his Excellency the Governor in Chief, that these articles, viz: twenty boxes type, one box of screws, one frame or press, with some printing ink, should pass from the United States into this Province. I directly said I should accompany him to the Custom House to ascertain the fact. On my arrival there, I informed the Collector of the Customs, in proper and respectful language, of what I had done. His *manner* towards me was insulting and contemptuous, as it has generally been, these two years past. He desired the man, having charge of the types, "not to mind that fellow;" said he had given *his permit*

to the Landwaiter, *that* was sufficient. I endeavoured to restrain the strong irritation, his words and manner produced. I observed, if such things were allowed to come in, I might have been informed they were expected, when of course I should not have touched them contrary to his Excellency's order; but that as his name had been made use of, in many instances, to deter me from making, or to give up, seizures; and as I knew his Excellency had been some time out of the Province, I requested to *see* such order, that I might obey it, otherwise considered I was warranted in acting as I had done.* The Collector directly called me "a d—d impudent scoundrel." Losing at that moment, all further command of my temper, I replied *no man* should use such language to me; that I had a mind to——and *would, if he repeated it*, pull his nose; adding he was a *low-minded coward*, sheltering under *his office*, to insult a man he *feared to meet in the way a gentleman should*. I instantly left the Custom House. There was no person present during the altercation, (that I know of,) excepting the man who had charge of the contraband property. I also swear that I cannot repair to Quebec, † agreeably to the commands of his Excellency, without leaving my large family destitute of funds for their support, which my expenses, to and from Quebec, would deprive them of. All my property in St. Johns is presently under execution, at the suit of a citizen of Quebec; and my last receipt of salary, &c. nearly expended. I have been informed by more than one person, of a determination expressed in September last, and since then, by the Collector of the Customs, to get me dismissed, *sooner or later*, from my situation. I have no right to name those persons without their permission, which I cannot this moment apply for. I believe most firmly, that the Collector has long sought an opportunity to urge me to some act or other that might procure my dismissal. I had no intention or purpose in my mind

* Because that type, for the Editor of a public journal, cannot (I should imagine) come under the description of "his own private use." He vends and sells *publicly* the work such types or press, &c. is essential in preparing and rendering fit for sale.

† I have heard much of the strong impression to my disadvantage in consequence of not presenting myself at Quebec. I beg to observe that, independently of illness, which obliged me to employ a Notary to write my defence, *from my dictation*, I consider that in this affidavit I rendered good and very sufficient reasons for not going to Quebec.

of insulting him, without gross provocation on his part.
(Signed) BART. TIERNEY.

Sworn before me, at L'Acadie, the }
3d day of September, 1823. }
Ls. DECOIGNE, N. P. J. P. }

[DOCUMENT No. 25.]

The only defence in my power to make, admitting as I have done in the subjoined affidavit, the *fact* of using intemperate expressions to the Collector of St. Johns, (which I am truly sorry as a *gentleman*, should have escaped *my lips*;) is, that they were extorted by indecent and scurrilous language, used by him to me. 30th August, 1822, Mr. Macrae having gave me similar gross and abusive language, I felt myself under the necessity of addressing his Excellency the Earl Dalhousie on the subject. What defence might have then been made to my just complaint, I know not. I offer an extract from a letter received from Colonel Darling, then at Sorel with his Excellency, and can declare with great truth, that it induced a most guarded conduct on my part, from which I have never, until the present unfortunate instance, deviated; although I have, from time to time, endured most patiently a variety of provocations, which I forbore reporting, lest I should acquire the name of a litigant, troublesome character.

Extract: "His Excellency hopes the relative duties of the Collector and yourself, will be conducted on principles that will render future complaint, on either side, unnecessary."*

I am perfectly unconscious of any "misconduct," or neglect of duty, or of *proper* observances towards the Collector, Comptroller, or any other individual in the Custom House. I have, to the best of my ability, discharged, *well and truly*, the duties of my situation, under peculiarly disadvantageous circumstances, one of which was the *settled* and absolutely rancorous ill will of the Collector, its effects operating to my prejudice many ways. It *may* be asked, why did I presume to require a *sight* of the Governor's order, that the goods alluded to in my affidavit should pass? Why not instantly defer to the Collector's will? Simply, that in *many* past transactions, one in par-

* See page 15.

ticular, which took place 25th April last, respecting the clearance out from this Port of the Steam Boat Phoenix, legally seized by me, the preceding August, the Collector thought proper to state to me *as fact*, a matter I believed on his word *to be fact*, but which I afterwards found to be the *reverse of fact*. * [I beg leave to solicit Mr. Secretary Cochran to produce the copy of my letter to the Collector of St. Johns, 25th April, 1823, and transmitted to his Excellency, 26th May last, to elucidate the above.] Referring to the conduct of the Collector of St. Johns *generally* towards me, I solemnly affirm, with the fullest sense of the sacred obligation of an oath in my mind, that it has been throughout the whole period of my being in office here, one continued series of most *ungentlemanly oppression*, and *positive injury*.—*Publicly* as head of the department here, he has, as far as lay in his power, rendered my situation almost unbearable, as well as disreputable; openly insulting me in the presence of notorious smugglers, and others, with whom, in the course of my duty, transactions occurred. Whenever his interference or decision became necessary, it has invariably been to render me contemptible, degrading, and depreciating me by publicly withholding that proper support † he should have given to an officer of his department, so long as the conduct of that officer was decorous and lawful; in a word, constantly endeavouring to render himself popular with a certain class of persons, and their adherents, at the expense of my respectability and feelings, as well as rendering my situation (the small annual salary excepted,) nearly profitless. *Privately* by disseminating in all directions, where it could *injure*, false and partial statements of my conduct and principles, by his own declarations, by those of his dependants, intimates and connexions. As a man to be got rid of, unworthy means have been resorted to, in order that I should be prejudged, and an ill impression created of me, in quarters where, as an humble individual, I ventured to look up with confidence for honour and justice. All this, though materially detrimental to my present circumstances, and future prospects in

* See page 31.

† It is in my power to adduce numerous instances of such conduct, even under the difficulty respecting *proofs and witnesses* in support of them, alluded to in my "Prefatory Observations."

this country, has been conducted in a way, that *law* cannot reach or effectually punish.

I repose my cause with gentlemen of honour and feeling, who will, I trust, draw a line between the abuse of power, and the deference justly due to it.

BART. TIERNEY.

ST. JOHNS.

[DOCUMENT No. 26.]

Castle of St. Lewis, Quebec, 30th September, 1823.

Sir—I am directed by his Excellency the Governor in Chief, to acquaint you, that in consequence of the complaint recently preferred against you by the Collector of St. Johns, and also of other representations he has received respecting your conduct, he finds it necessary to dismiss you from the situation of Guager of that Port; and your appointment accordingly ceases from the date of the communication of this letter to you by the Collector of the Customs, through whose hands it is sent.

I am, Sir, your most obedient servant,

A. W. COCHRAN.

Mr. B. Tierney, St. Johns.

(Communicated to Mr. Tierney, 3d October: William Macrae.)

Unable to account for some expressions in the above letter, aware of being a long time subject to the machinations of enemies, whose *total want of principle*, rendered them not the less dangerous, when they found a standard they might rally under securely, I felt it due to myself to endeavour to elicit, if possible, from his Excellency, what precise allegations were made against me, and *by whom preferred*. I therefore addressed to his Lordship the following letter.

[DOCUMENT No. 27.]

Port St. Johns, 6th October, 1823.

My Lord—I received from the Collector of this Port, on the 3d instant, an official communication, dated Quebec, 30th September, acquainting me, that in consequence of a recent complaint preferred against me, by the said Collector, and also “other representations” received by your Excellency respecting my conduct, you had found it necessary to dismiss me from my situation

of Guager at this Port; my appointment accordingly to cease from the day of the date of such letter being presented to me by the Collector of St. Johns.

Severe as I must feel this measure to be, (taking into consideration the peculiar circumstances in which I have been placed for some time, partly originating in the transactions of the past year,) it becomes me now, only to bow respectfully to your Excellency's decision. One favour, however, I still venture to solicit, trusting its propriety and justice furnishes me with an adequate excuse for the liberty of preferring such request. It is, my Lord, that you will be pleased to order a distinct statement * to be made to me, what were the nature of those "other representations" made against me, and by whom? for, by the wording of the letter I have received, it appears, that to these "other representations," in conjunction with the Collector of St. Johns' specific complaint, my dismissal has been owing; while I am absolutely ignorant of their extent or tendency! Your Excellency will find in the rectitude and honour of your own mind, an excuse for my solicitude to obtain information on this point when you condescend to reflect, that my dismissal, from an office, the duties of which, during three years past, I can appeal to God and my conscience, I have endeavoured to discharge with integrity and the best intentions, goes forth to that community amongst whom it now becomes necessary I should earn, by my personal exertions, an honourable support for my family, coupled with an indefinite censure, that cannot fail creating an impression to my disadvantage, in the most candid mind. Entreating your Excellency's gracious attention to the injury my character must sustain while so situate.

I have the honour to be, my Lord,

Your Excellency's most obedient servant,
BART. TIERNEY.

To his Excellency the Earl Dal- }
housie, Governor in Chief, &c. }

* The Collector's complaint being specifically stated to me in the letter of 27th August, I therefore replied to it in the same way, and to the other allegations of "misconduct" (which I was left to conjecture, as I must even now do,) generally, because that they were not specifically made known to me. I will now submit to the judgment of any reasonable man, whether this letter indicates fear of strict scrutiny into my conduct or the reverse.

criminal as Commanding Officer
against Mr. Feinney by the Rep.
This Friend, Messrs. Macdonald
No other Individuals had he
to the Conduct & Character of Mr.
observation & experience had in
Character of certain Persons in
Opinion that Mr. Feinney was a man
He therefore the more deeply regretted
a reply to Lord Dalhousie's interog-
atory surprise - has felt it his bound-
duty to assist Mr. Feinney in his
greater service he could render was
Dalhousie of the matters now at issue
that he might (as he was then for)
his Lordship and enjoy the oppor-

N.B. The above conversation (as
by Capt. White) was referred to
of May 1820

M. A. Feinney

at St Johns he had been set
representations of Capt Sherman
& himself. from these & from
we heard a sentence prejudicial
to Pierkey. Since that period
made him acquainted with the real
St Johns. He had been long of
an injured & calumniated man
to having given no consideration
at all but that he had been taken
under duty to do anything in his
power in their distresses".
That the only reparation - the
only to be a disclosure to Lord
to her by Capt White
proceeding to England - meet with
the unity of doing justice"

sentiments expressed to me
in my letter to Lord Dalhousie

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[DOCUMENT No. 28.]

Castle of St. Lewis,
Quebec, 18th October, 1823. }

Sir—His Excellency the Governor in Chief, directs me to acquaint you, in answer to your letter of the 6th instant, that he took the trouble *himself*,* when at St. Johns, to make enquiry into your conduct and character, *before he decided* upon any step, in consequence of the complaint lately made by the Collector against you, and he found every report to be unfavourable to you. His Excellency *regretted* being forced, by his public duty, to adopt a severe course towards you; but you are yourself alone to blame.

His Excellency will not notice any future letters or applications from you.

I am, Sir, your most obedient,

A. W. COCHRAN,

Secretary.

Mr. B. Tierney, St. Johns.

Here then would seem to rest, a most extraordinary transaction. It will be easily understood, that during three years of *unceasing vigilance*, as a Custom House Officer, I *must* have made *many enemies* in a place where, I will boldly assert, the majority of the inhabitants are either directly or indirectly connected with that illegal trade, to *prevent which*, an expensive establishment of the Customs, consisting of *five* officers, viz: Collector, Comptroller, Guager, Senior, and Junior Landwaiters, are there placed. The seizure of the Phoenix, with my known determination of appealing to the laws for the *right* in that seizure, I was by so much *evident management* deprived of the idea gone abroad by the final issue (apparently) of that affair, that I had lost the protection

* My opinion of the integrity and native goodness of Lord Dalhousie's *heart* remains unshaken; but I justly complain that a powerful and complicated interest has been heard against me (too generally the lot of the unfriended man to experience) for many months.

To a combination of malignant characters, who 15 months ago *planned my ruin*, with the *aids and props of name and station*, and to colour over their under-working baseness, who have by successful arts created this interest against me, do I attribute the whole of the evils I have *suffered*, and am now suffering from, with that of those *subordinate agents* who effectually screen their *principals* from view.

of my government, has added security and confidence to the malignancy of those enemies. In this state of things, a complaint is preferred against me by the Collector of his Majesty's Customs, supported by the *affidavit* of the custodian of the types—a perfectly disinterested witness! His Excellency the Governor in Chief, with a graciousness of *intention* that does equal honour to the goodness of his heart and his knowledge of mankind, *pauses* "before he decides on any step, *in consequence of that complaint.*" He arrives at St. Johns, on his way to Isle aux Noix, and condescends to enquire into my general conduct and character;* but *from whom*, or of *what nature*, were those "unfavourable reports," received by him, in the very *focus* of detraction and enmity toward me; reports that rendered it his unwilling, but "public duty," to dismiss me, it has not been his Excellency's pleasure to disclose. Condemned, without being made aware of, or confronted, with my calumniators, I am placed in an infinitely more disadvantageous situation that a publicly accused criminal, for whom the law provides this salutary principle, "that no man shall be considered guilty, until he is *satisfactorily proven to be so.*" By the course it has been his Excellency's will to adopt, I am to a *certain extent* despoiled of my character, deprived of my right as a British subject to investigate and detect slanderous aspersions, and from instituting, what might then become my paramount duty, a *prosecution* against certain individuals for a *conspiracy to defame*—a procedure that would at once bring me and my *unjust accusers*, (whoever they may be,) before that bulwark of justice—a Jury of twelve honest and impartial men.

* Captain Sherman, of the *Phoenix*, had the honour of being specially introduced to his Excellency the Governor in Chief by the Collector of St. Johns, and I am informed the Captain had, on their way to Isle aux Noix, a long conversation with his Excellency. On his return to St. Johns I presented myself for the express purpose of finding out what "other matters" than the Collector's complaint were against me. (I was then on the *spot* with my accusers I should presume) but it was not his Excellency's gracious pleasure to *hear me*. Next post (I believe) brought up from Quebec my *dismissal*,

APPENDIX.



ALTHOUGH rather out of *its proper place*, I beg to present the affidavit of Mr. John Stewart, touching the affair of the Phoenix. I might with little trouble collect *many others*, notwithstanding that, this is tolerably conclusive.

" I, John Stewart, do depose, that I remember the morning of the twenty sixth August, 1822; saw Mr. Tierney the Custom House Officer, putting the King's mark upon the Phoenix Steam Boat; heard him desire the Engineer to put down the Steam; this was partly done; afterwards * heard Captain Sherman ordering the Engineer to *keep up the steam*, and have *every thing ready for starting*, as he was going to *Montreal to give bonds for the Boat*. The Steward of the Boat came up to me, and asked me if I was going passenger to White Hall; I said I was not; he then told me to go ashore immediately, *as the Boat was to go off directly*. Captain Sherman was standing *a few paces from us*. The Steward spoke to me with *a loud voice*. I was a stranger in St. Johns at the time, and went on board the Phoenix, as well as a number of other persons, to see what was going forward about the seizure.

(Signed)

" JOHN STEWART.

" Sworn before me, at L'Acadie, the
27th day of October, 1823.

" Ls. DECOIGNE, N. P. J. P." }

The following papers I am induced to insert, in order to shew that I neglected no opportunity (after the appointment of the present Collector and Comptroller at

* This was when Captain Sherman, finding the bonds were to be given in *Montreal*, requested his trunks, and returned into the Phoenix to order them ashore, and give the necessary directions to his people.

St. Johns,) to obtain a removal from that place, as well as to put down some of the petty scandals now in respecting me.

Port St. Johns, 12th December, 1822.

My Lord—I most humbly entreat your Excellency to pardon the liberty of addressing you by private letter, instead of a petition, or memorial, the style it would be most proper to observe. I resort to it as the easiest means of laying my situation before you. When your Excellency had the goodness to appoint me Guager at this Port, Colonel Ready held out to me the strong probability there was, that, should my conduct and activity deserve approbation, I might expect promotion, whenever the then Collector became deceased; seniority in office being the governing principle (where conduct was worthy,) in the department. On Mr. Lindsay's demise, I did presume to apply for the Comptrollership. By conferring that office on his son, your Excellency doubtless carried in your mind *the integrity* and long service of his *worthy father*. By the death of Mr. Beek, (grandfather to the present Comptroller of St. Johns,) Mr. William Hall, it is reported, is to succeed him in office, and there is an opportunity for your promoting me to his situation of Waiter and Searcher at Montreal, should it not interfere with the just claim and expectation of any other man. Should none such exist, I entreat your Excellency to generously appoint me. My salary is small, £40 a year; no house rent attached, my other emoluments uncertain; * on this income, a family of seven persons solely depend for support. Although still a young man, I have, in one capacity or other, served his Majesty nearly sixteen years.

* * * * *

I can with confidence refer your Excellency for my approved conduct in these several situations to Deputy Commissary General O'Meara, and Commissary Gene-

* The situation might have averaged about £75 a year.

The passage marked with astericks, relating wholly to early life and family affairs, I expunge, as not interesting to the public. Any gentleman, however, willing to serve me, may see the original letter, and receive the fullest explanation.

ral Sir William Robinson. For *many reasons* my situation here is *truly uncomfortable*, and I would gladly exchange it (if for the benefit of my family,) for almost *any other*. Obedient to a former command of your Excellency, forbids my entering further on *this subject*. Were I a single man, my habits being frugal, I should not perhaps be so forward in seeking promotion, but I find it nearly impossible to maintain my family and give them the common decencies of life. My wife, born and brought up in the rank of gentlewoman, has suffered the evils of our destiny, with great patience: I see her health declining, and cannot afford her the comforts she stands in need of.* I trust this appeal to your Excellency's feeling and goodness, may have its effect. Most gratefully shall it be appreciated by me.

I am, my Lord, with dutiful respect,
Your Excellency's most humble and
Obedient servant,
BART. TIERNEY.

To his Excellency the Earl }
Dalhousie, Governor in }
Chief, &c. &c. &c. }

Castle of St. Lewis, }
Quebec, 14th December, 1822. }

Sir—I am directed by his Excellency the Governor in Chief to inform you, in reply to your application for the situation of Waiter and Searcher at Montreal, that he cannot give you any hope *at present* of your being removed from the situation you now hold.

I am, Sir,
Your most obedient humble servant,
A. W. COCHRAN.

Mr. B. Tierny, St. Johns.

Reddish's Hotel, Jermyn Street, }
16th March, 1814. - }

Sir—Extreme hurry of business prevented my immediate attention to your note of the 10th instant. The Certificate you require of me, I herewith enclose.

* This was at the time an absolute fact.

If you can point out any specific service in my power to render you, I shall be very ready to serve you.

I am, Sir, your most obedient humble servant,
M. D. O'MEARA.

B. Tierney, Esq.
13, Bridge Road, Lambeth. }

"CERTIFICATE."

"I Certify, that Mr. Bartholomew Tierney came out to me, to Cadiz, in the spring of 1810, with the strongest possible recommendation from Major Gen'l. Ross. I directly gave him employment in my department as acting Clerk in charge, and Storekeeper at Isla de Leon. The situation was one of considerable trust. I cannot speak too highly of his attention to duty, steady deportment, and strict integrity. Mr. Tierney left the department to proceed to England for the recovery of his health.

(Signed)

"M. D. O'MEARA,

"Deputy Commissary General."

"London, 16th March, 1814."

I reentered the Commissariat service in 1814, in a certainly inferior situation to what I had heretofore held, but being the only thing then vacant, (unless for commissioned officers,) I accepted my appointment in London, April 1814, and came out to Quebec. Commissary General Sir William Robinson, when leaving Canada, placed me with the usual allowances and *increased* pay, on the peace establishment. On his arrival, his successor in office, Mr. Commissary General Wood, reduced these, as well as the appointments of several other individuals. I left the department finally in 1819, *not* for "breach of trust," "neglect of duty," or "misconduct," but in consequence of the still further reduction which then took place.

B. T.

THE END.

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